

**SUBJECT:** Revising payments and penalties in property tax appeals

**COMMITTEE:** Ways and Means — committee substitute recommended

**VOTE:** 8 ayes — Craddick, Ramsay, Grusendorf, Heflin, Holzheuser, Oliveira, Stiles, Telford

0 nays

3 absent — Horn, Thompson, Williamson

**WITNESSES:** None

**BACKGROUND :** Taxpayers can appeal to district court an appraisal review board decision on their property tax protests. To avoid delinquency while the appeal is pending, the Tax Code provides that the taxpayer can pay the assessed amount under protest or the greater of the uncontested amount of taxes or the amount of taxes imposed on the property in the previous year.

If the court determines that paying some portion of property taxes would be unduly burdensome and therefore restrict the taxpayer's access to the court, it may order that payment be deferred pending final determination.

If the court finally determines that the taxpayer owes some or all of the contested taxes, those taxes must be paid with interest, but no penalties are assessed. If the court decides in favor of the taxpayer, it may award reasonable attorneys fees of \$15,000 or 20 percent of the total amount by which the tax liability is reduced, whichever is greater, up to an amount equal to the total reduction.

Property owners who fail to remit property taxes to a central appraisal district by the due date are delinquent and must pay a penalty, as outlined in Section 33.01 of the Tax Code.

**DIGEST:** CSHB 2201 would change the tax payment that must be remitted pending an appeal to district court. A taxpayer would have to pay either the amount due on the portion of the taxable value of the property that was not in dispute or the total amount of taxes due on the property, whichever was less.

The taxpayer would be liable for penalties on that portion of the tax bill that was upheld by the court if the taxes had not been paid by the due date.

An appraisal district that prevailed in an appeal could be awarded reasonable attorneys fees of up to \$5,000 if the court determined that the amount of taxes due exceeded by at least \$5,000 the amount claimed as proper by the property owner. CSHB 2201 also would limit to \$5,000 the amount of attorneys fees that could be recovered by a property owner who prevailed in an appeal.

If the court found that the property owner had brought an appeal in bad faith, it could impose a penalty of up to five percent of the amount due to each taxing unit. The penalty would constitute a lien on the taxpayer's property.

If a final determination of an appeal occurred after the property owner paid a portion of a tax finally determined to be due, tax assessors for each taxing unit would have to send a final supplemental tax bill, including interest and penalties calculated as if the supplemental tax due had become delinquent on the delinquency date.

If a property owner did not pay any portion of taxes because a court found it would restrict the owner's access to the courts, after final determination of the appeal tax assessors for each taxing unit would prepare a supplemental tax bill, including interest calculated as if the supplemental tax due had become delinquent on the delinquency date.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house. The changes made by the bill would apply only to appeals filed on or after its effective date.

**SUPPORTERS  
SAY:**

CSHB 2201 would close a major loophole that has allowed and even encouraged major taxpayers to abuse the appeals system by deferring large amounts of their tax bills with impunity. The Texas Supreme Court's decision in *Rockwall County CAD v. Lall* declared unconstitutional the requirement that property owners must pay the amount of taxes imposed on their property in the preceding year in order to avoid delinquency pending the outcome of an appeal. Shielded by this ruling, some taxpayers routinely

and severely underestimate their tax liability in an appeal, even though they know they are unlikely to prevail, because they can save considerable amounts of money by delaying their tax payments without fear of any penalty or interest. The delays, on the other hand, can have severe consequences for the revenue flow of local school districts and other local taxing units.

CSHB 2201 would close this loophole by providing that taxpayers would have to pay the normal penalty charged late payers. The penalty properly would be limited to that portion of the contested taxes that a court determined was rightfully owed. The bill would remove any incentive to underpay local taxes and ensure that the appeals process was used only to address legitimate grievances.

Limiting recovery of attorneys fees also would do much to limit abuses of the appeals process, which has been corrupted by awards of excessive fees to plaintiffs. By removing any risk on the part of the plaintiff, these awards in and of themselves encourage frivolous suits. Central appraisal districts have seen their legal expenses soar as they have to defend their assessments in an increasing number of such suits.

The budgets for these districts are funded by the local taxing entities, which in turn are funded by taxpayers. Eventually, the public ends up subsidizing these lawsuits and fee awards. Awarding attorney's fees to prevailing appraisal districts would remedy this inequity. In order to protect smaller taxpayers who rarely contest such large sums, CSHB 2201 would award attorneys fees to appraisal district only when a taxpayer owed more than \$5,000 in contested taxes.

Instituting penalties for appeals brought in bad faith would further discourage frivolous lawsuits and encourage more realistic assessment by taxpayers of their own property values.

Making the bill effective immediately would allow its provisions to apply to the current tax year and take a strong step toward protecting revenues for school districts and other taxing entities who are affected when large amounts of property taxes are deferred.

OPPONENTS SAY: CSHB 2201 would unduly limit the rights of property owners to appeal their property tax appraisals. Limiting the recovery of plaintiffs attorney's fees and providing recovery of attorneys fees for appraisal districts could be burdensome to smaller taxpayers. Appraisal districts have guaranteed funding streams and should not be treated the same manner as individual taxpayers, who may not have the same resources available to them.

OTHER OPPONENTS SAY: The \$5,000 limit on recovery of attorney's fees is too low. The amount should be increased to allow prevailing parties to recover actual and legitimate attorney's fees.

The bill fails to clearly define a lawsuit brought in bad faith. As a result, property owners could be intimidated from bringing valid suits. The bill should contain some provision referring to the definition of bad faith outlined in the Civil Practices and Remedies Code.

NOTES: The committee substitute would provide for immediate effect rather than September 1, 1997.